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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**FEB 9 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )

Promoting Efficient Use of Spectrum )  
Through Elimination of Barriers to the )  
Development of Secondary Markets )

WT Docket No. 00-230

**COMMENTS FOR CINERGY CORP.**

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Dated: February 9, 2001

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**Promoting Efficient Use of Spectrum  
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**COMMENTS FOR CINERGY CORP.**

Pursuant to FCC Rule 1.415, 47 C.F.R. § 1.415, Cinergy Corp., by and through its undersigned telecommunications counsel, hereby files comments in the above referenced proceeding. Cinergy applauds the FCC's efforts to foster more vigorous and efficient use of spectrum through the elimination and/or modification of unnecessary regulatory impediments to spectrum use. At the same time, however, Cinergy urges the FCC to ensure that the integrity of incumbent *licensee* operations are protected and preserved. Specifically, to the extent that the FCC institutes measures to decrease restrictions on spectrum use by unlicensed parties, Cinergy urges the FCC to: 1) generally preserve existing uses and interference protection for licensees in all services and only introduce new services or standards to the extent that they afford licensees an equal or greater level of protection than they currently receive; 2) establish informational and procedural mechanisms for the rapid identification and resolution of interference issues; and 3) establish licensee and lessee accountability for spectrum lessee's compliance with FCC requirements.

## **I. BACKGROUND**

1. Cinergy is one of the largest diversified energy companies in the United States and is the parent company of Cincinnati Gas & Electric Company (CGE) in Ohio and PSI Energy, Inc. (PSI Energy) in Indiana. Together, these operating companies serve 1.4 million electric and 455,000 gas customers in Ohio, Indiana and Kentucky. To facilitate its internal communications and monitoring of its power generation and distribution system, Cinergy operates extensive private land mobile and microwave communications systems. On the land mobile side, CGE operates facilities authorized under call signs in the 150-174 MHz 450-470 MHz, and 800 MHz bands. PSI Energy operates facilities authorized under call signs in the 150-174 MHz and 450-470 MHz bands. These operations are in addition to call signs licensed to PSI Energy in the 800 MHz band. These mobile communications systems support Cinergy's utility operations. Finally, both PSI Energy and CGE have approximately 89 private operational fixed microwave licenses. Cinergy is thus vitally interested in the Commission's Notice of Proposed Rulemaking and Policy Statement because it could affect Cinergy's use of its wireless communication system.

2. Cinergy emphasizes that Cinergy and other power utilities provide the core resource -- electricity -- that permits modern society to function. Absent electric power, other industrial and business operations simply cannot be performed. For the population as a whole, utilities have responsibility for providing electric power to hospitals and other critical facilities throughout their service territories, while simultaneously ensuring the safety of their crews working on distribution lines, where a misstep can be instantly fatal to utility employees and deprive large areas and populations of electric power. While safety is a concern for all Part 90 eligibles, power utilities and other critical infrastructure industries such as the petroleum pipeline

industry and the railroad industry have demonstrably more crucial requirements for reliable, interference-free communications in order to serve the population at large, as well as safeguard the lives of their employees.

## **II. DISCUSSION**

3. The FCC's Notice of Proposed Rulemaking and the accompanying Policy Statement propose to establish secondary spectrum markets and represent potentially positive steps in the administration of the radio spectrum. Cinergy agrees that increased flexibility in certain FCC rules can lead to the increased use of spectrum that may not be fully utilized, thus contributing to the overall availability of spectrum. This can in turn create opportunities to expand existing operations and to develop new services.

4. As the FCC takes steps to carry out this initiative, Cinergy believes it is critical that the FCC protect the integrity of incumbent licensed operations, particularly in bands that have traditionally been devoted to use by private operations of the type contemplated by Congress in establishing the *public safety radio services* exemption. As the FCC is well aware, wireless systems are essential to the safe and efficient operation of utility infrastructure, which in turn has a direct and extraordinary impact on the public. Interference to operations on these systems poses significant potential safety hazards and requires the devotion of resources that could otherwise be allocated to a more beneficial use. Accordingly, the FCC must ensure that, while it seeks to advance the potential benefits of a secondary market in spectrum, it does not open the door to a degradation of the quality of existing operations. Cinergy submits that such a result would far outweigh any benefits gained from increased spectrum use.

**A. Interference Standards and Service Rules**

5. As a preliminary matter, to the extent that it permits leasing of spectrum by incumbent licensees, the FCC must generally maintain current uses and interference standards in existing bands. New services and interference standards should only be permitted if they are definitively shown to afford equal or greater protection to licensed operations than they receive now. In this regard, the FCC must take an extremely measured approach, providing an opportunity for notice and comment any time it proposes a change in the current operational standards for an existing service. Only in this fashion, Cinergy submits, will the introduction of leasing or other secondary market opportunities constitute a net benefit to the public.

**B. Resolution of Interference Disputes**

6. Related to the preservation of existing interference protection, the FCC must establish procedures to ensure that interference disputes are subject to rapid and conclusive resolution. The introduction of leasing into the existing radio services will increase overall spectrum use, and will result in a more dynamic operational environment, with users commencing and terminating service more frequently, and with less advance scrutiny, than is currently the case. As a result, opportunities for co-channel interference will increase. It is critical to the integrity of the spectrum bands as a whole that licensees have an effective means of identifying and terminating interference resulting from any improper use.

7. In Cinergy's view, this requires a two-fold approach. First, licensees must be able to identify the source of interfering operations. Accordingly, the FCC must institute procedures for providing public notice of leased operations. This could, Cinergy submits, be accomplished through the establishment of a database accessible on the Wireless Telecommunications Bureau's

website. Licensees proposing to lease spectrum should be required to provide advance notice by entering the operational details and term of such leasing as a condition to moving forward with it. In this way, licensees could have a reference for determining the source of interference. Second, the FCC must institute a procedural mechanism for the resolution of interference disputes involving leased spectrum. While this could take many forms, the most important elements are speed and conclusiveness. This could be accomplished through a complaint process involving relatively short response timeframes with default provisions for failing to meet deadlines. Additionally, Cinergy submits that the FCC should establish a presumption in favor of licensed operations over leased operations in interference disputes.

### **C. Licensee Accountability**

8. In the Notice of Proposed Rulemaking, the FCC has requested comments on the extent to which the licensee should be accountable for the actions of the lessees and any sublessees. In Cinergy's view, it is appropriate to hold all parties individually or jointly accountable for the actions of any lessees or sublessees. While Cinergy recognizes the potential benefits of increased flexibility in the use of spectrum by unlicensed entities, it is clear that such flexibility can lead to a decrease in compliance with the FCC's regulations as the relationship of the actual user and the FCC becomes more attenuated. In order to check this possibility, there should be maximum accountability and redress in the leasing context. The licensee will be in the best position to control the conduct of its lessees and should be held responsible therefor. All parties using or leasing should be equally responsible for compliance and subject to penalties for noncompliance.

### III. CONCLUSION

9. Cinergy believes that the FCC's secondary markets initiative can lead to significant benefit for the public, provided that care is taken to ensure that licensed operations are properly protected. The existing wireless operations of Cinergy and others are simply too critical to place at risk in this regard. Cinergy is confident that the FCC can reach its objectives without compromising the integrity of these operations.

**WHEREFORE, THE PREMISES CONSIDERED,** Cinergy Corp. respectfully requests that the FCC consider these comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: February 9, 2001



## **CERTIFICATE OF SERVICE**

I, Christine S. Bisio, do hereby certify that on this 9th day of February 2001, a copy of the foregoing "Comments for Cinergy Corp." was hand-delivered to each of the following:

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